

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**S.G., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Bergenfield, NJ, Employer**

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**Docket No. 18-1271  
Issued: March 1, 2019**

*Appearances:*

*James D. Muirhead, Esq., for the appellant<sup>1</sup>*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On June 11, 2018 appellant, through counsel, filed a timely appeal from a December 11, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup> Pursuant to the

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from December 11, 2017, the date of OWCP's last decision, was Saturday, June 9, 2018. As the appeal deadline fell on a weekend, the 180-day filing period is extended to the close of the next business day; Monday, June 11, 2018. 20 C.F.R. § 501.3(f)(2).

Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>4</sup>

### **ISSUE**

The issue is whether appellant has met her burden of proof to establish a recurrence of disability commencing April 25, 2017, causally related to her accepted January 3, 2006 employment injury.

### **FACTUAL HISTORY**

On January 3, 2006 appellant, then a 36-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she injured her right wrist when she slipped and fell down steps while in the performance of duty.

OWCP accepted appellant's claim for contusion of the right shoulder region and right wrist. It paid wage-loss compensation and placed her on the periodic rolls, effective December 23, 2007. Appellant was released to limited-duty work on April 1, 2008. She stopped work again on June 12, 2008. Appellant continued to work intermittently and received wage-loss compensation for intermittent disability.<sup>5</sup>

OWCP later expanded appellant's claim to include right carpal tunnel syndrome, cervical intervertebral disc degeneration, cervical radiculopathy, and lumbar radiculopathy.

On October 6, 2015 appellant underwent authorized lumbar surgery and was placed off work.

In a July 25, 2016 progress report, Dr. Marc S. Arginteanu, a Board-certified neurological surgeon, released appellant to work with restrictions of no prolonged bending, twisting, lifting, sitting, or standing.

On September 6, 2016 appellant returned to limited-duty work. She returned to full-duty work on October 25, 2016.

Appellant, however, stopped work again on April 24, 2017.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> The Board notes that, following the December 11, 2017 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

<sup>5</sup> On July 29, 2014 OWCP granted appellant a schedule award for 27 percent permanent impairment of the right upper extremity and 20 percent permanent impairment of the right lower extremity. The award ran from January 30, 2014 to October 18, 2016.

In an April 25, 2017 letter, Dr. Arginteanu indicated that appellant was suffering from debilitating lumbar spine pain. He recommended that she remain off work until further notice.

In a May 16, 2017 attending physician's report (Form CA-20), Dr. Arginteanu noted the original January 3, 2006 date of injury and diagnoses of lumbar and cervical spine stenosis. He indicated that she was partially disabled from July 25, 2016 to April 1, 2017. Dr. Arginteanu related that appellant was permanently disabled and unable to resume work.

On May 18, 2017 appellant filed a notice of recurrence (Form CA-2a) alleging that on April 24, 2017 she sustained a recurrence of disability of her January 3, 2006 employment injury. She alleged that, one month after she returned to work following her most recent surgery in October 2016, she noticed recurring pain and stiffness in her back. On the reverse side of the claim form the employing establishment confirmed that, following the original injury, appellant returned to full duty on October 25, 2016 and stopped work again on April 24, 2017.

In a May 19, 2017 report, Dr. Nora Taha, a physical medicine and rehabilitation specialist, reported that appellant had returned to work in September 2016 and began to experience low back pain radiating to the right hip and thigh. She reviewed appellant's history and noted her various surgeries. Upon physical examination of appellant's lumbar spine, Dr. Taha observed mild paraspinal tenderness and pain in all planes during range of motion. Straight leg raise testing was equivocal on the right. Dr. Taha diagnosed chronic pain syndrome and lumbosacral radiculopathy. She related that appellant had ongoing low back pain due to chronic discogenic pain and intermittent radicular pain, status post fusion. Dr. Taha reported that appellant's pain had improved now that she was not traveling to work five days per week. She noted that appellant was "now on temp disability."

By development letter dated May 24, 2017, OWCP advised appellant that to establish her recurrence claim she must show a worsening of her original injury without an intervening injury or new exposure such that she was no longer able to work. It requested that she respond to specific questions regarding the April 25, 2017 date of alleged recurrence and submit medical evidence, which established how she was unable to work during the claimed period as a result of her accepted injury. Appellant was afforded 30 days to submit additional evidence.

On June 12, 2017 OWCP received appellant's response to its development letter. Appellant reported that sitting in an upright position with her head tilted downward with no back support put a strain on her back. She related that according to a recent magnetic resonance imaging scan she developed an additional herniated disc. Appellant explained that she filed a recurrence claim because she could barely get up out of her chair and had to hold onto something when she walked.

By decision dated June 26, 2017, OWCP denied appellant's claim for a recurrence of disability. It found that the medical evidence submitted failed to establish that her accepted January 3, 2006 injury had worsened to the extent that he was disabled from work beginning April 25, 2017.

On August 11, 2017 appellant, through counsel, requested reconsideration. Counsel noted that he was enclosing a July 17, 2017 report by Dr. Arginteanu with new findings that were related to her original injury.

In a July 17, 2017 letter, Dr. Arginteanu related that appellant had worked for the employing establishment for many years with various degrees of lifting heavy materials, as well as moving, bending, and twisting. He noted that she sustained injuries to multiple parts of her lumbar and cervical spine, which required various surgeries. Dr. Arginteanu reported that appellant's current symptoms included persistent pain in the cervical and lumbar region. He noted that current objective findings showed internal fixation devices with screws, rods, and disc replacement material and that diagnostic studies confirmed the implantation of those devices. Dr. Arginteanu diagnosed status post cervical surgery and status post lumbar surgery for decompression, fusion, and instrumentation. He opined that appellant could no longer perform work due to her persistent pain and that she was completely disabled from all work. Dr. Arginteanu reported that her new findings were related to the original workers' compensation accident. He provided an examination note and work status note, which indicated "no work" for appellant.

OWCP also received reports by Dr. Taha dated July 13 and 24, 2017, which related appellant's complaints of low back pain, aggravated with prolonged sitting, and getting up from a seated position. Dr. Taha reviewed appellant's history and conducted an examination. She reported mild right paraspinal and Quad Lumborum tenderness in the lumbar spine. Neurological examination showed intact sensation in the bilateral upper and lower extremities. Dr. Taha diagnosed sacroiliitis and lumbosacral radiculopathy.

By decision dated December 11, 2017, OWCP denied modification of its June 26, 2017 decision. It found that the medical reports submitted did not sufficiently explain how appellant's recurrence of disability on April 25, 2017 was causally related to the January 3, 2006 employment injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>6</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.<sup>7</sup> For each period of disability claimed, an employee has the burden of proof to establish causal relationship between a recurrence of disability and his or her accepted employment injury.<sup>8</sup>

OWCP's implementing regulations define a recurrence of disability as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to

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<sup>6</sup> *Supra* note 2.

<sup>7</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>8</sup> *Dominic M. Descaled*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

the work environment.<sup>9</sup> This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force) or when the physical requirements of such an assignment are altered such that they exceed the employee's physical limitations.<sup>10</sup>

Whether a particular injury causes an employee to become disabled from work and the duration of that disability are medical issues that must be proven by a preponderance of reliable, probative, and substantial medical opinion evidence.<sup>11</sup> Findings on examination and a physician's opinion, supported by medical rationale, are needed to show how the injury caused the employee's disability from his or her particular work.<sup>12</sup> For each period of disability claimed, the employee must establish that he or she was disabled from work as a result of the accepted employment injury. The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow the employee to self-certify his or her disability and entitlement to compensation.<sup>13</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing April 25, 2017, causally related to her accepted January 3, 2006 employment injury.

The medical evidence relevant to the claimed recurrence includes reports by Dr. Arginteanu. In an April 25, 2017 letter, Dr. Arginteanu related that appellant was suffering from debilitating lumbar spine pain. He recommended that she remain off work. In a May 16, 2017 Form CA-20, Dr. Arginteanu noted a January 3, 2006 date of injury and indicated that appellant was unable to resume work. Although he opined that appellant was unable to work as of April 25, 2017, the Board finds that he did not provide a fully-rationalized explanation as to why she was disabled beginning April 25, 2017. Specifically, Dr. Arginteanu did not provide objective findings to demonstrate how appellant's accepted injuries had worsened to the point of disability, but merely attributed her inability to work to subjective complaints of pain. He did not include an explanation of why her accepted injury had changed such that she could no longer perform her letter carrier duties. Dr. Arginteanu's opinion is, therefore, of diminished probative value.<sup>14</sup>

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<sup>9</sup> 20 C.F.R. § 10.5(x).

<sup>10</sup> *Id.*

<sup>11</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

<sup>12</sup> *Dean E. Pierce*, 40 ECAB 1249 (1989).

<sup>13</sup> *Amelia S. Jefferson*, *supra* note 11.

<sup>14</sup> *See J.L.*, Docket No. 15-1951 (issued May 16, 2016).

Dr. Arginteanu also indicated in a July 17, 2017 letter that appellant's current symptoms included persistent pain in the cervical and lumbar region. He reported objective findings of internal fixation devices with screws, rods, and disc replacement material. Dr. Arginteanu diagnosed status post cervical surgery and status post lumbar surgery for decompression, fusion, and instrumentation. He opined that appellant could no longer perform work due to her persistent pain and reported that her new findings were related to the original workers' compensation injury. The Board finds, however, that Dr. Arginteanu did not provide an explanation or rationale for how appellant's current disability was related to her accepted January 3, 2006 employment injury. Rather, Dr. Arginteanu correlated in general terms that her inability to work was related to the January 3, 2006 employment incident.<sup>15</sup> As he failed to attribute disability to the accepted employment injuries, his reports are insufficient to establish appellant's recurrence claim.<sup>16</sup>

Likewise, the reports by Dr. Taha do not sufficiently support that appellant sustained a recurrence of disability beginning April 25, 2017 causally related to her work related January 3, 2006 employment injury. In reports dated May 19 to July 24, 2017 report, she provided examination findings and diagnosed chronic pain syndrome and lumbosacral radiculopathy. Dr. Taha reported that appellant had ongoing chronic discogenic pain and intermittent radicular pain. She noted that appellant was "now on temp[orary] disability." None of Dr. Taha's reports, however, adequately explain how appellant's accepted injury had changed or worsened to the extent that she was unable to work beginning April 25, 2017. Her reports, therefore, are insufficient to establish appellant's recurrence of disability claim.<sup>17</sup> Furthermore, none of Dr. Taha's reports reference the period of claimed recurrence nor explain whether appellant's disability beginning April 25, 2017 was causally related to her January 3, 2006 employment injury.<sup>18</sup>

For each period of disability claimed, an employee has the burden of proof to establish a causal relationship between his or her recurrence of disability and his or her accepted employment injury.<sup>19</sup> Because appellant has not submitted sufficient medical evidence demonstrating that she was unable to work beginning April 25, 2017 due to a spontaneous change or worsening of January 3, 2006 employment injury, the Board finds that she has not met her burden of proof in this case.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>15</sup> *J.H.*, Docket No. 14-775 (issued July 14, 2014).

<sup>16</sup> *R.A.*, Docket No. 14-1327 (issued October 10, 2014).

<sup>17</sup> *C.L.*, Docket No. 16-0004 (issued June 14, 2016); *William A. Archer*, *supra* note 11.

<sup>18</sup> *See William A. Archer*, *supra* note 11 (the Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of claimed disability).

<sup>19</sup> *Supra* note 6.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a recurrence of total disability commencing April 25, 2017, causally related to her January 3, 2006 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 11, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 1, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board